

REMARKS

This Amendment is responsive to the August 29, 2006 Office Action and places claims 7 and 17 in independent form and, in view of the indicated allowable subject matter in the Office Action, claims 7-9 and 17-19 are believed to be in condition for allowance.

In the Office Action, claims 1-4, 6, 10-14, 16, 46, and 48 stand rejected under 35 USC § 103(a) over Koziczowski (United States Patent No. 5,411,162) in view of German Reference No. DE 19509349. Claims 5 and 15 stand rejected under 35 USC § 103(a) for obviousness over Koziczowski in view of the German reference and further in view of United States Patent No. 5,621,189 to Dodds. Applicant respectfully requests reconsideration of the foregoing rejections, particularly the rejections of independent claims 1 and 10 over Koziczowski in view of the German reference.

Koziczowski discloses a V-band coupling for an explosion-proof enclosure. As shown in Figs. 1-2, enclosure (10) includes a base (14) and a cover (16) which are secured by a V-band coupling (20). Coupling (20) includes a V-band (28). V-band (28) includes a roughened layer (25) along its interior surface. Roughened layer (25) is provided on a sidewall (82) of V-band (28) and includes a textured surface (90) and a corrosion resistant metal coating (92) applied to the textured surface (90), as shown in Fig. 7. A suitable corrosion resistance coating for coating (92) is disclosed as being nickel. (See column 4, lines 1-8 of Koziczowski).

The German reference discloses a clamp band that has a plastic lining extruded to the clamp band in a molten state to provide a gripping surface. The clamp band is used to join two elongated parts together, typically pipe sections. From the English-language abstract attached to the German reference, the elastic clamp band (1) has a plastic coating (2) on the inside of the clamp band. At least one connecting element (3, 4) passes through a hole (5, 6) in the ends (7, 8) of the clamp band. The clamp band (1) and plastic coating (2) are made of plastic and extruded together. The plastic coating (2) consists of two strips (2a, 2b) that are spaced apart from each other parallel with the edges of the clamp band (1).

Independent claim 1 is directed to a closure assembly comprising a split ring member, a locking device, and a polymeric coating applied to at least an inward facing side of the split ring member that contacts a cover and rim of a container. Independent claim 10 is directed to a container for transporting goods and materials comprising a container body, a

cover, and a closure assembly. The closure assembly comprises a split ring member, a locking device, and a polymeric coating applied to at least an inward facing side of split ring member that contacts the cover and rim of the container. The previous clarifying changes to independent claims 1 and 10 indicate that the polymeric coating has a degree of resiliency to absorb impact forces during a drop test.

It is respectfully submitted that neither Koziczkowski nor the German reference teaches or suggests a split ring member provided with a polymeric coating of a character to absorb impact forces during a drop test. The ability of the polymeric coating to absorb impact forces during a drop test is due to the resiliency of this coating. This ability is not present nor could it be inferred from either the metal coating (92) disclosed by Koziczkowski or the plastic coating (2) disclosed by the German reference. With respect to the metal coating (92) disclosed by Koziczkowski, this coating is provided for corrosion resistance and is made of a corrosion resistant metal coating such as nickel. The underlying textured surface to which metal coating (92) is applied is roughened layer (25) which may provide a gripping feature to V-band (28). To the extent that the metal coating (92) has an added benefit of increasing the coefficient of friction between V-band (28) and elements (14, 16), Koziczkowski does not suggest using just a coating to achieve gripping, much less a polymeric coating with resilient properties to absorb impact forces during a drop test. At best, Koziczkowski indicates that a metal coating can be applied to an underlying gripping surface, but not that the metal coating itself creates a gripping surface.

Moreover, nowhere in Koziczkowski is it suggested that metal coating (92) may be a polymeric coating as claimed in independent claims 1 and 10. Clearly, a hard, non-resilient metal coating such as nickel disclosed by Koziczkowski for corrosion resistance cannot be used as a basis for suggesting the substitution of a resilient polymeric coating in its place. They have fundamentally different "hardness" properties and the disclosed metal coating (92) is clearly not in any way "resilient". The metal coating (92) in Koziczkowski is not pertinent to independent claims 1 and 10 because metal coating (92) simply has no inherent resiliency of any kind.

While the German reference discloses that clamp band (1) may be made of plastic and extruded with a plastic coating (2), this teaching does not lead to the conclusion that plastic coating (2) when extruded with clamp band (1) has resilient characteristics to absorb impact forces during a drop test. No such conclusion can be fairly made based on the drawings of this reference and the English abstract accompanying this reference as relied on

in the Office Action. This is especially true since the clamp band (1) of the German reference serves the purpose of joining pipe segments and never suggests having or needing the resiliency necessary to sustain a drop test or even a like application. To the extent that it is argued in the Office Action to apply the disclosed plastic coating (2) in place of metal coating (92) disclosed by Koziczowski, neither reference teaches or suggests or provides any indication of the desirability of using a plastic coating in place of metal coating (92) taught by Koziczowski. The asserted opportunity to combine these teachings is insufficient to establish a *prime facie* case of obviousness. (MPEP §2143.01 (III)). The evidence against this substitution is extensive.

First, there is the obvious fact that metal coating (92) is, just that, a metal coating and it would not have been obvious or apparent to one skilled in the art to substitute a resilient polymeric coating or even a plastic coating in its place. A metal coating will clearly have substantially different properties than a plastic coating and chief among them in the present application is hardness. A metal coating will lack any degree or modicum of resiliency so it would not have been intuitive or obvious to simply conclude that plastic is a suitable or even a desirable substitute for metal. Metal coating (92) is provided in the context of Koziczowski for corrosion resistance. Any resulting increase in the coefficient of friction that is incidental to the application of metal coating (92) does not in any way lead one skilled in the art to conclude that a plastic coating would yield the same result. In actuality, one skilled in the art would likely conclude that a sprayed-on metal coating is necessary to achieve the secondary result of an increase in the coefficient of friction and only look to another type of metal coating for this purpose. Accordingly, it can only be reasonably concluded that the sprayed-on metal coating (92) which is provided for corrosion resistance would lead one skilled in the art away from substituting a plastic coating in its place. (MPEP §2145(X-D)). With this in mind, there is nothing in the German reference that would lead one skilled in the art back to substituting the plastic coating (2) from the German reference for the Koziczowski metal coating (92). The plastic coating (2) is co-extruded with plastic clamp band (1) to arrive at a composite plastic clamp band for joining adjacent pipe segments. The German reference's primary purpose is to produce a gripping surface for the adjoined pipe segments. This is a very different and non-analogous application to configuring a container to withstand and pass a drop test from a three-foot height. Again, the mere asserted opportunity to combine these teachings is insufficient to establish a *prime facie* case of obviousness. (MPEP §2143.01 (III)). Accordingly, the fundamentally different

purpose of the plastic coated clamp band disclosed by the German reference, its physical construction from two extruded plastic layers, and the complete lack of a teaching in the German reference relating to any resiliency associated with the plastic coated clamp band lead directly to the conclusion that one skilled in the art who have no motivation based on the teachings of the German reference to substitute plastic coating (2) in place of metal coating (92) in the structure disclosed by Koziczowski.

The Office Action appears to construct obviousness rejections of independent claims 1 and 10 based on significant hindsight reconstruction using Applicant's disclosure to arrive at the rejections presented in the Office Action. While a judgment on obviousness may have a component of reconstruction based on hindsight reasoning, the present Office Action develops the obviousness rejections of independent claims 1 and 10 entirely on hindsight reconstruction based on Applicant's disclosure, which is impermissible. In the end, even the considerable level of hindsight reconstruction used to construct the obviousness rejections in the Office Action fails to identify a teaching of a split ring member with a polymeric coating having a degree of resiliency to absorb impact forces during drop test. Again, the German reference teaches a plastic coating to produce a gripping surface to hold pipes in place and Koziczowski teaches a metal coating on a split ring applied for corrosion resistance. Neither of these references provides any motivation to use a polymeric coating in a container closure assembly for an increase in resiliency to withstand a drop test. Only Applicant's disclosure provides a teaching of a polymeric coating having a degree of resiliency to absorb impact forces during drop test and this cannot be used as the blueprint leading a *prime facie* case of obviousness as the Examiner is aware. (MPEP §2145(X-A); MPEP §2143.01(I)).

For the foregoing reasons, Applicant respectfully submits that independent claims 1 and 10 distinguish over the cited references and are in condition of allowance and such is respectfully requested. Claims 2-6 and 46 depend directly or indirectly from independent claim 1 and distinguish over the cited references for all the reasons discussed hereinabove. Likewise, claims 11-16 and 48 depend directly or indirectly from independent claim 10 and distinguish over the cited references for all the reasons discussed previously. Reconsideration of the rejections of claims 1-6, 10-16, 46, and 48 is respectfully requested.

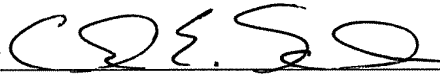
Application No. 10/719,350
Amendment Dated December 22, 2006
Attorney Docket No. 5010-031012

Should the Examiner wish to discuss the claimed subject matter further, the Examiner or Supervisory Examiner Newhouse is invited to contact the undersigned at the telephone number provided below.

Respectfully submitted,

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